

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

AUG 9 2001

JASON E. BENSON

:

CIVIL ACTION

V.

:

NO. 1:CV-00-1229

PER

DEPUTY CLERK

WILLIAM G. ELLIEN, M.D., et al.

:

(Judge Caldwell)
(Magistrate Judge Blewitt)

MEMORANDUM OF LAW OF WILLIAM G. ELLIEN, M.D. IN OPPOSITION
TO JASON E. BENSON'S MOTION FOR AN ORDER COMPELLING DISCLOSURE
OR DISCOVERY AND FOR EXPENSES AND SANCTIONS

I. PROCEDURAL HISTORY

Jason E. Benson ("Benson") has filed a complaint pursuant to 42 U.S.C. §1983 against Ronald Long, M.D. ("Long") and William G. Ellien, M.D. ("Ellien") contending that they provided inappropriate medical care to him while he was incarcerated by the Commonwealth of Pennsylvania. Long and Ellien both filed motions to dismiss which the Court denied. The Court has recently ordered that Benson be deposed in response to a motion by Ellien. Benson filed a motion for an order compelling disclosure or discovery and for expenses and sanctions on June 1, 2001. This Court recently ordered the defendants to respond to the motion. Ellien's counsel never received a copy of the motion.

II. FACTUAL BACKGROUND

Ellien incorporates by reference as if set forth herein in full the procedural history of the case set forth above.

III. ISSUES PRESENTED

Should the Court direct Benson to serve a copy of the motion for an order compelling disclosure or discovery and for expenses and sanctions upon Ellien's counsel so Ellien's counsel can

respond?

IV. ARGUMENT

Ellien's counsel never received a copy of the plaintiff's motion for an order compelling disclosure or discovery and for expenses and sanctions. An examination of the file shows no such motion. Ellien's counsel respectfully requests that Benson serve another copy of the motion. Ellien's counsel is willing to pay for reasonable copying charges.

To the extent that the motion seems to contend that Ellien did not provide discovery to Benson. All discovery requests of Benson were answered fully to the extent that appropriate objections were raised.

V. CONCLUSION

In the light of the foregoing William G. Ellien, M.D. respectfully requests that Benson serve a copy of the motion for an order compelling disclosure or discovery and for expenses and sanctions upon his counsel.

MONAGHAN & GOLD, P.C.

BY: 

ALAN S. GOLD
Attorney for Defendant,
William G. Ellien, M.D.

CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of defendant, William G. Ellien, M.D.'s Answer and Memorandum of Law in Opposition to Plaintiff's Motion for an Order Compelling Disclosure or Discovery and expenses and sanctions by U.S. First Class Regular Mail on this date to the following individuals:

Jason Eric Benson
SCI-Smithfield
#DS-6483
P.O. Box 999
1120 Pike Street
Huntingdon, PA 16652

James D. Young, Esquire
Lavery, Faherty, Young & Patterson, P.C.
301 Market Street, St. 800
Harrisburg, PA 17108

David L. Schwalm, Esquire
Thomas, Thomas & Hafer
305 North Front Street
P.O. Box 999
Harrisburg, PA 17101

DATE: 8/7/01



ALAN S. GOLD